

Remarks

This Application has been carefully reviewed in light of the Office Action mailed July 14, 2006. Applicant appreciates the Examiner's consideration of the Application. Applicant believes all pending claim are allowable over the Examiner's rejections without amendment and respectfully provides the following remarks. Independent Claim 1 has been amended to add the conjunction "and" between elements of the claim, but this amendment is not considered narrowing and is not made in relation to any of the Examiner's rejections. Applicant respectfully requests reconsideration and allowance of all pending claims.

I. Information Disclosure Statement (IDS)

The Examiner indicates that the IDS filed December 15, 2003 does not comply with 37 CFR 1.98(a)(1). Shortly after filing this Response, Applicant intends to file a Supplemental IDS and PTO 1449-Form to comply with the requirements listed in the Office Action, and Applicant respectfully requests that the Examiner consider the references listed on the PTO 1449-Form before the mailing of a next Office Action, should a next Office Action be issued.

II. Applicant's Claims are Allowable over *Tsuchiya*

The Examiner rejects Claims 1-4, 13-16, 25, and 34 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent 7,051,173 to Tsuchiya, et al. ("*Tsuchiya*"). Applicant respectfully disagrees and discusses independent Claims 1 and 34 as examples.

A. Independent Claim 1 is Allowable

Independent Claim 1 recites, as amended:

A serverless backup system for backing up information on a network including one or more servers, comprising:
a backup storage system for backing up information; and
a storage system for storing information to be backed up and restored, wherein information being backed up is transferred directly from the storage system to the backup storage system without going through a server and information being restored is transferred directly from the backup storage system to the storage system without going through the server.

Applicant respectfully submits that *Tsuchiya* does not appear to disclose, teach, or suggest

each and every limitation recited in Claim 1.

As just one example, Applicant respectfully submits that *Tsuchiya* does not appear to disclose, teach, or suggest “a storage system for storing information to be backed up and restored, wherein ***information being backed up is transferred directly from the storage system to the backup storage system without going through a server*** and information being restored is transferred directly from the backup storage system to the storage system without going through the server,” as recited in Claim 1. Instead, *Tsuchiya* discloses the following:

In the copy control management of (a. 12), in the case that a plurality of disks 13 exist in a cluster, the copy management unit 25 ***instructs each computer 11 to copy any disk 13***, thereby ***dispersing copy processes to the computers 11***. Then, ***each computer 11 copies the disk 13*** that is designated by the copy management unit 25. Thus, ***the disk 13 is copied by a plurality of computers 11***, so that the load of a backup process is dispersed, and finally the copy time is shortened.

(*Tsuchiya*, 15:17-24; emphasis added) Thus, it does not appear that *Tsuchiya* discloses a system in which “***information [that is] backed up is transferred directly from the storage system to the backup storage system without going through a server***,” as recited in Claim 1.¹

“A claim is anticipated only if ***each and every element as set forth in the claim*** is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added); M.P.E.P. § 2131. In addition, “[t]he identical invention must be shown in ***as complete detail as contained in the . . . claim***.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989) (emphasis added); *see also* M.P.E.P. § 2131. Furthermore, “[t]he elements must be arranged ***as in the claim*** under review.” *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990) (emphasis added); M.P.E.P. § 2131. As illustrated above, *Tsuchiya* does not appear to disclose, either expressly or inherently, each and every limitation recited in Claim 1, as is required under the M.P.E.P. and governing Federal Circuit cases.

¹ Applicant does not concede that the “computers 11” disclosed in *Tsuchiya* can necessarily be equated with the “one or more servers” recited in Claim 1, but it is unclear to Applicant from the Examiner’s rejection what particular part of the system disclosed in *Tsuchiya* the Examiner is attempting to equate with the one or more servers recited in Claim 1.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 1 and its dependent claims.

For at least certain analogous reasons, Applicant respectfully requests reconsideration and allowance of independent Claims 13 and 25 and their dependent claims. For example, Applicant respectfully submits that *Tsuchiya* does not appear to disclose, teach, or suggest “backing up information by transferring information directly from the storage system to the backup storage system without going through a server,” as recited in independent Claim 13. As another example, Applicant respectfully submits that *Tsuchiya* does not appear to disclose, teach, or suggest “code for backing up information by transferring information directly from a storage system to a backup storage system without going through a server,” as recited in independent Claim 25.

B. Independent Claim 34 is Allowable

Independent Claim 34 recites:

A serverless backup method comprising:
opening a file system root directory;
parsing the file system root directory for allocation tables of each file
and finding attributes of each file;
examining the attributes of each file and determining whether a file is
resident or non resident;
backing up entire attributes of a file if it is determined that the file is
resident; and
backing up attributes and data blocks belonging to the file if it is
determined that the file is non resident.

Applicant respectfully submits that *Tsuchiya* does not appear to disclose, teach, or suggest each and every limitation recited in Claim 34.

For example, the cited portion of *Tsuchiya* does not appear to disclose, teach, or suggest “backing up entire attributes of a file if it is determined that the file is resident” and “backing up attributes and data blocks belonging to the file if it is determined that the file is non resident,” as recited in Claim 34. As allegedly disclosing these limitations, the Examiner cites Column 11, Line 58 through Column 12, Line 46 of *Tsuchiya*. The cited portion of

Tsuchiya states, “By performing such a difference backup process instead of performing the backup processes (entire backup processes) of all the blocks of disk 13, the copy time is shortened, and the required medium capacity is decreased.” (Column 12, Lines 43-46) Thus, it appears that the cited portion of *Tsuchiya* discloses “performing such a difference backup process instead of performing the backup processes (entire backup processes) of all the blocks of disk 13.” Applicant respectfully submit that this disclosure does not appear to disclose, teach, or suggest “***backing up entire attributes of a file if it is determined that the file is resident***” and “***backing up attributes and data blocks belonging to the file if it is determined that the file is non resident***,” as recited in Claim 34.

Applicant notes that as allegedly disclosing “examining the attributes of each file and determining whether a file is resident or nonresident,” as recited in Claim 34, the Examiner cites a disclosure in *Tsuchiya* appearing at Column 8, Line 63 through Column 9, Line 11. If the Examiner maintains the rejection on these grounds, Applicant respectfully requests that the Examiner explain how the decision purportedly disclosed at Column 8, Line 63 through Column 9, Line 11 relates to the actions purportedly taken at Column 11, Line 58 through Column 12, Line 46 of *Tsuchiya*. This would be particularly helpful given that Claim 34 recites “examining the attributes of each file and ***determining whether a file is resident or nonresident***,” “backing up entire attributes of a file ***if it is determined that the file is resident***” and “backing up attributes and data blocks belonging to the file ***if it is determined that the file is non resident***.”

Applicant reiterates the legal standard set forth above that is required for a finding of anticipation. As illustrated above, the cited portions of *Tsuchiya* do not appear to disclose, either expressly or inherently, each and every limitation recited in Claim 34, as is required under the M.P.E.P. and governing Federal Circuit cases.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 34.

III. The Separately Rejected Dependent Claims are Allowable over the Proposed Combinations

The Examiner rejects Claims 5, 17, and 26 under 35 U.S.C. § 103(a) as being unpatentable over *Tsuchiya* in view of U.S. Patent 6,728,848 to Tamura, et al. (“*Tamura*”). The Examiner rejects Claims 6-7, 18-19, and 27-28 under 35 U.S.C. § 103(a) as being unpatentable over *Tsuchiya* in view of U.S. Patent 6,081,875 to Clifton, et al. (“*Clifton*”). The Examiner rejects Claims 8-9, 20-21, and 29-30 under 35 U.S.C. § 103(a) as being unpatentable over *Tsuchiya* in view of *Clifton* and U.S. Patent 6,785,786 to Gold, et al. (“*Gold*”). The Examiner rejects Claims 10-12, 22-24, and 31-33 under 35 U.S.C. § 103(a) as being unpatentable over *Tsuchiya* in view of *Clifton* and U.S. Patent 6,738,923 to Blam, et al. (“*Blam*”).

Dependent Claims 5-12, 17-24, and 26-33 depend from independent Claims 1, 13, and 25, respectively, which Applicant has shown above to be allowable over *Tsuchiya*. It does not appear that the references cited by the Examiner to reject dependent Claims 5-12, 17-24, and 26-33 make up for the above-discussed deficiencies of *Tsuchiya*. Thus, dependent Claims 5-12, 17-24, and 26-33 are allowable at least because they depend from allowable independent claims. Additionally, dependent Claims 5-12, 17-24, and 26-33 recite further patentable distinctions over the various references cited by the Examiner. To avoid burdening the record and in view of the clear allowability of independent Claims 1, 13, and 25, Applicant does not specifically discuss these distinctions in this Response. However, Applicant reserves the right to discuss these distinctions in a future Response or on Appeal, if appropriate. Moreover, Applicant does not admit that the proposed combinations of references are possible or that the Examiner has demonstrated the required teaching, suggestion, or motivation to combine these references.

For at least these reasons, Applicants respectfully request reconsideration and allowance of dependent Claims 5-12, 17-24, and 26-33.

IV. No Waiver

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the references cited by the Examiner. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the Examiner's rejections.

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Conclusion

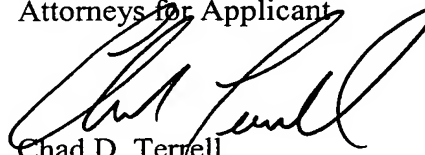
Applicant has made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad D. Terrell, Attorney for Applicant, at the Examiner's convenience at (214) 953-6813.

Although no fees are believed due at this time, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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